

Scope of Work:
Tribal Water Resource Study
for the
Evaluation of Benefits and Impacts to Indian
Assets and Resources for the
North-of-Delta Off-Stream Storage Investigation

BACKGROUND

The San Francisco Bay-Delta is the largest estuary on the West Coast. For decades, conflicting demands for water resources have threatened the Bay-Delta's ecosystem, its water quality, water supply and levee stability. In August 2000, the California Bay-Delta Authority (CBDA, formerly known as CALFED) has put forward an implementation plan in the Programmatic Record of Decision (ROD) to restore ecological health and improve water management for beneficial uses of the Bay-Delta system and its tributary watersheds.

The Bay-Delta Program plan proposed by CBDA consists of eight programs including the Integrated Surface Storage program of which the North-of-Delta Off-Stream Storage Investigation (NODOS) is one of five reservoir projects being evaluated for potential development.

The major objectives of the NODOS investigation are to evaluate the potential for an off-stream reservoir in the Sacramento Valley to:

- Improve Sacramento River flows during critical fish migration periods;
- Restore riparian habitat for fish and wildlife in the Sacramento River;
- Provide Level 2 and Level 4 water supply to Sacramento River Wildlife Refuges;
- Improve the quality of drinking water supplies in the Sacramento-San Joaquin Delta;
- Improve water supply reliability and water management flexibility relating to municipal, environmental, and agricultural uses throughout California.

The NODOS investigation is intended to address these objectives by studying the potential for diverting water from the Sacramento River during times when environmental, hydrologic, and operational conditions are favorable for off-stream storage. This storage would be used subsequently to meet the objectives stated above either by exchange with local users or by release into the Sacramento River.

After issuance of the ROD, the Bureau of Reclamation and the California Department of Water Resources (DWR) initiated joint planning studies along with 15 local partner agencies to evaluate NODOS with DWR being overall lead agency and Reclamation being the federal lead agency for National Environmental Policy Act (NEPA) process. A Notice of Intent to prepare an Environmental Impact Statement and Report (EIS/R) was published in the Federal Register in November 2001.

The Department of Interior Manual Part 512.2 states that Reclamation is responsible for identifying any potential impact of its plans, projects, or activities on Indian Trust resources. Any effect must be explicitly addressed in planning/decision documents such as an EIS/R. In the event an evaluation reveals any impact on Indian trust resources, assets, health, or safety, Reclamation must consult with the affected, recognized tribal government. This consultation will be documented in the NEPA compliance document along with a statement of potential impacts on Indian Trust Assets.

With passage of Public Law 108-7, in February 2003, Reclamation was authorized by Congress to undertake feasibility studies for Sites Reservoir along with ongoing environmental and other projects in a balanced manner (PL 108-7, Section 215). In addition, PL 108-7, Section 201 authorizes the Commissioner of the Bureau of Reclamation to enter into grants and cooperative agreements with any Indian tribe in order to increase opportunities for Indian tribes to develop, manage, and protect their water resources, in fiscal year 2003 and thereafter.

After Congress explicitly authorizes a feasibility study such as NODOS, Reclamation is required to perform an assessment consistent with the “Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies” (P&Gs). The P&Gs define the Federal objective in water and resources planning as a contribution to national economic development consistent with protecting the nation’s environment. Various potential plan formulations are evaluated relative to acceptability, effectiveness, efficiency, and completeness. The P&Gs require an examination of changes in the economic value of the national output of goods and services (NED account) of these alternative plans. Other plan evaluations usually performed during the P&G analysis include accounting for Regional Economic Development (RED), Environmental Quality (EQ), and the Other Social Effects (OSE). The result of these analyses is a determination of the federal interest in a proposed project and a recommendation to Congress on the desirability of implementing the project. Congress must subsequently authorize and fund a project before Reclamation can proceed to design and construction.

PURPOSE

The purpose of this Scope of Work is to provide the Tribe(s) with the opportunity to participate in the NODOS environmental and feasibility investigations by performing water resource studies that address the benefits and/or impacts to the Tribe’s assets, resources, health, safety and/or currently identified future plans for economic development, housing, and social projects associated with the North-of-Delta Off-stream Storage Project. The resulting studies funded through this process are not intended to address the issue of quantifying Tribal water rights. The Tribe’s primary purpose for participating in this program will be to obtain additional funding to clearly identify the potential effects of the NODOS project on certain pivotal Tribal resources and assets, provide a professional and technical rationale for any identified impacts to allow such impacts to be addressed in the NEPA EIS/R process, and to prepare appropriate Tribal positions, if required, that

would allow the Tribe to develop, maintain, manage, and protect its water resources, inclusive of its future water needs in fiscal year 2003 and thereafter.

OBJECTIVE

The tribal water resource studies will provide for Reclamation an evaluation of potential impacts and benefits of NODOS to the Tribe's resources and assets. Such evaluation is required under Departmental Manual 512.2 Departmental Responsibilities for Indian Trust Resources and Reclamation's Indian Policy.

BENEFITS

The tribal water resource studies will document the Department's adherence to the federal trust responsibility to Indian tribes, and Reclamation's own Indian Policy. It will also provide tribes an opportunity to have meaningful input in the development of the NODOS EIS/EIR and Reclamation's Feasibility Study. Such meaningful input is directed in Departmental guidance found in DM 512. 2, Section 3.

RESPONSIBILITIES OF PARTIES

Under this agreement, the Tribe will be responsible for:

- Performance of the statement of work described below by May 15, 2004.
- Attendance at monthly meetings with Reclamation's Grants and Cooperative Agreements Officer's Technical Representative (GCAOTR), or other meetings as deemed necessary by the GCAOTR.
- Provide Reclamation written monthly progress reports, due at monthly meetings, on the nature and extent of the progress the Recipient has made on the Scope of Work, and the nature and extent of Recipient's expenditures.
- Provide a draft Report for Reclamation review and comment.
- Attend a final project meeting to present tribal conclusions and recommendations to Reclamation and BIA management.
- Provide a final report documenting the project work, conclusions, and recommendations.
- Maintain financial records pertaining to the agreement.
- Maintain technical data and records pertaining to the water resource study and agreement.

- Include Reclamation as a participant in the tribal selection process to select consultants or subcontractors, before the Tribe makes selections.
- Provide Reclamation drafts of tribal work products for Reclamation review and comment, prior to their finalization.

Reclamation will:

- Upon the request of the Tribe, provide copies of NODOS technical project information such as land, infrastructure and water data.
- Upon the request by the Tribe , make available Reclamation technical personnel to answer specific technical questions, pertaining to the NODOS Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and Reclamation's Feasibility Study.
- Upon formal written request by the Tribe, Reclamation will consider the inclusion of selected wells into the Reclamation's "Semi-Annual Groundwater Monitoring Program" at no charge and exclusive of costs associated with this project. Within this grant period, Reclamation will work together with the Tribe to process and formally implement and/or deny the request, subject to resources and program guideline issues, and will provide a formal response to the Tribe's request.
- Provide timely notification to the Tribe to participate in NODOS technical meetings regarding the EIS/EIR and Feasibility Study.
- Attend monthly progress meetings.
- Provide timely review and comment on tribal work products.
- Attend technical and management meetings requested by the Tribe.

STATEMENT OF WORK

The Statement of Work is intended to provide an evaluation of NODOS land and water impacts and benefits, associated with recognized tribal assets and resources.

The required deliverable is a comprehensive report discussing in detail the findings of the Tribe for each of the tasks below. The completed report shall be submitted to Reclamation under the signature of the Tribe's Chairperson. The tasks that are described in the statement of work below must be completed by the Recipient on or before May 15, 2004.

Task 1. Background Information

Provide background information about the Tribe's history, federal recognition status, Trust-held and owned fee simple acreage, number of enrolled tribal members and, on and off-reservation population. Prepare a general location map of the Tribe's trust and owned fee-simple lands based on information available from BIA, the Tribe, the County and other standard mapping data sources, such as the USGS. The map will show major features including trust land boundaries, lakes, rivers, roads, and other similar items.

Task 2. Historical and Present Water Uses

Evaluate and summarize the quantity of past and present water uses by the Tribe. Include past and existing irrigation systems and non-irrigation water uses. Assumptions and methods used in estimating quantities of past and present water uses should be documented in the report.

Task 3. Potential NODOS Future Water Uses

Determine potential future tribal water uses related to NODOS project and how that future use would differ with no NODOS. The estimated quantities of future use should be developed using available data or other sources of information developed by the Tribe for the purposes of this study. These estimates should include both agricultural, municipal, and industrial as well as other water supply needs. The economic aspects of these water supplies should be given consideration in the development of the Tribe's water study. Assumptions and methods used in estimating quantities of future water uses should be documented in the report.

Task 4. Potential NODOS Impacts to Tribal Assets and Resources.

Determine the potential impacts to tribal assets related to NODOS. These impact analyses should at a minimum include impacts to surface water, ground water, trust and Tribal-owned fee simple lands and other documented tribal assets and resources.

Impact analyses should include evaluations of potential impacts to land relating to current and future agricultural, municipal, industrial, recreational uses and other water aspects including:

- Water quality
- Water quantity
- Relevant hydrogeological information inclusive of groundwater flow, aquifer characterization, etc.
- Historical data regarding the riparian and ground water availability and usage on trust and owned Tribal lands.
- Specific agricultural water needs data relevant to current and potential agricultural water use and practices.

- Federally reserved in-stream flow rights, riparian water rights, fishing rights, hunting rights or gathering rights
- Erosion of agricultural and riparian lands in trust or owned as a resource by the Tribe.
- Land subsidence
- Groundwater elevations

Assumptions and methods used in estimating quantities of past and present water uses should be documented in the report.

Task 5. Tribal Recommendations and Conclusions

Provide a written report with documentation that supports the Tribe's conclusions and recommendations regarding potential tribal benefits and impacts to tribal assets, resources, and future needs related to the NODOS project. The results of this report will be presented to Reclamation and BIA management and any other agencies the Tribe wishes to have present at the study completion meeting, which is scheduled for May 2004, prior to the release of the public draft of the NODOS EIS/EIR. Nothing in the presentation of the document shall preclude the Tribe from utilizing the contents therein for other purposes, including the preparation of public statements relative to the EIS/EIR and public comment process.

SPECIAL PROVISIONS

Timeline for the completion of the major activities funded through this Scope of Work:

Completion of Activities 1-7 (shown below)
To Be Accomplished with FY2003 funding (\$50,000):

- ▶ Activity 1: Identification of major components and results expected for circulation to consultants/consultant in a request for proposal (RFP): August 01 – September 15, 2003.
- ▶ Activity 2: Selection process to secure professional expertise in completing desired studies; contracting with consultant(s): September 16-November 01, 2003.
- ▶ Activity 3: Consultant work/study; coordination with assigned Tribal staff; site visits; Tribal release and provision of previous water studies completed; coordination with on-going water studies and analyses; collaboration with Tribal Economic Development Plan: December 15, 2003-February 01, 2004.
- ▶ Activity 4: Continuing research, circulation of selected draft subparts and preparation of first draft. First draft available for review by all parties: March 15, 2004.
- ▶ Activity 5: Review and comment from all parties: March 15-April 01, 2004.
- ▶ Activity 6: Preparation and approval of final document: April 20, 2004.
- ▶ Activity 7: Formal submission of the prepared document: May 15, 2004.

FUNDING

Reclamation shall reimburse the recipient for allowable costs incurred, in accordance with applicable OMB Circular during the effective period of this agreement. The amount requested for funding for the Tribe for FY2003 is \$50,000 and is subject to fund availability.